

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Jeffrey S. Stroman,)
Plaintiff,) Civil Action No.: 0:18-cv-01632-JMC
v.)
York County Department of Social)
Services,)
Defendant.)

)

ORDER AND OPINION

This matter is before the court for review of the Magistrate Judge's Report and Recommendation ("Report") filed on October 18, 2018. (ECF No. 40.) The Report addresses Plaintiff Jeffrey S. Stroman's suit under 42 U.S.C. § 1915 and recommends that the court grant Plaintiff's request to voluntarily withdraw his federal claims (ECF No. 34), dismiss the entire case without prejudice, and terminate any other pending motions (ECF No. 21) as moot. For the reasons stated herein, the court **REJECTS** the Report and **RECOMMITS** the matter to the Magistrate Judge for further consideration consistent with the opinion below.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards which this court incorporates herein without a full recitation. (ECF No. 40.) On June 14, 2018, Plaintiff, proceeding *pro se*, filed this employment discrimination action pursuant to 28 U.S.C. § 1915, raising claims pursuant to the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 1201 *et seq.*, and the Family and Medical Leave Act ("FMLA"), 28 U.S.C. §§ 2601 *et seq.* (ECF Nos. 12, 16.) In response to Defendant's Motion to Dismiss for Failure to State a Claim (ECF No. 21), Plaintiff filed a Second Amended Complaint, which the Magistrate Judge construed as a Motion to

Amend, seeking to withdraw his FMLA and ADA claims. (ECF No. 34.) In his Motion to Amend, Plaintiff asserted for the first time claims of intentional infliction of emotional distress and defamation pursuant to the South Carolina Torts Claims Act, S.C. Code Ann §§ 15-78-10, *et seq.* (“SCTCA”). (ECF No. 34 at 3.) Plaintiff also sought to add a DSS employee and York County as defendants to this action, asserting claims against them pursuant to the SCTCA. (*Id.* at 4.) Defendant does not oppose Plaintiff’s voluntary withdrawal of his federal claims. (ECF No. 39.)

On October 18, 2018, the Magistrate Judge issued an Order and Report and Recommendation. (ECF No. 40.) The Order denied Plaintiff’s Motion to Amend because both Defendant and proposed defendants, a DSS employee and York County, have immunity for SCTCA claims brought in federal court. (*Id.* at 2–4.) The Report recommended granting Plaintiff’s voluntary request for withdrawal of his FMLA and ADA claims. (*Id.* at 4.) The Report reasoned that because no valid claims would remain after the withdrawal of the federal claims, the entire case should be dismissed without prejudice. (*Id.*)

II. STANDARD OF REVIEW

The Magistrate Judge’s Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge only makes a recommendation to this court, and the recommendation has no presumptive weight. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The responsibility to make a final determination remains with the court. *Id.* at 271. As such, the court is charged with making *de novo* determinations of those portions of the Report and Recommendation to which specific objections are made. *See* 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). Thus, the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation or recommit the matter with

instructions. 28 U.S.C. § 636(b)(1).

III. DISCUSSION

Plaintiff was apprised of his opportunity to file objections to the Report on October 18, 2018. (ECF No. 40 at 6.) Objections to the Report were due by November 1, 2018. (*Id.*) However, objections were due by November 4, 2018, if a party was served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (*Id.*) Plaintiff's Objection was filed on November 5, 2018, which is one day after the deadline. (ECF No. 45.) In his untimely Objection, Plaintiff requested an extension to re-file his FMLA and ADA claims. (*Id.* at 2, 8.)

As Plaintiff has expressed his intent to retract his voluntary withdrawal of his FMLA and ADA claims in light of the Magistrate Judge's Order, the court rejects the Report's recommendation that the court grant Plaintiff's request to withdraw his FMLA and ADA claims, rejects the termination of Defendant's Motion to Dismiss, and rejects the Report's recommendation that the entire case be dismissed without prejudice. (ECF No. 34.)

IV. CONCLUSION

After a thorough review of the Report and the record in this case, the court **REJECTS** the Magistrate Judge's Report and Recommendation (ECF No. 40). The court **RECOMMITS** the case to the Magistrate Judge to address the still pending FMLA and ADA claims in the context of Defendant's now pending Motion to Dismiss.

IT IS SO ORDERED.



United States District Judge

November 14, 2018
Columbia, South Carolina